

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
MARTINSBURG**

**RONALD D. SMITH,**

Petitioner,

**v.**

**CIVIL ACTION NO.: 3:19-CV-125  
(GROH)**

**DONNIE AMES, Superintendent,**

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION**

Pending before the Court is the Report and Recommendation (“R&R”) of United States Magistrate Judge Robert W. Trumble. ECF No. 14. Pursuant to this Court’s Local Rules, this action was referred to Magistrate Judge Trumble for submission of a proposed R&R. Magistrate Judge Trumble issued his R&R on October 25, 2019. In his R&R, Magistrate Judge Trumble recommends that the Petitioner’s § 2254 petition [ECF No. 1] be denied and dismissed with prejudice.

**I. BACKGROUND**

Upon review of the record, the Court finds that the facts as explained in the R&R accurately and succinctly describe the circumstances underlying the Petitioner’s claims. The Court incorporates those facts herein. However, outlined below are the most relevant facts of this case.

On August 5, 2019, the Petitioner, proceeding pro se, filed a Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a person in state custody. ECF No. 1. The Petitioner is currently serving a sentence for his conviction of two counts of sexual abuse by a parent, guardian or custodian, and one count of sexual assault in the third degree in

the Circuit Court of Berkeley County, West Virginia. The Petitioner asserts twenty-eight grounds for relief as follows: (1) qualifications of jury, (2) jury deliberations, (3) indictment shows no offense, (4) prejudicial pretrial publicity, (5) speedy trial, (6) mental capacity at time of trial, (7) incapacity to stand trial due to drug use, (8) consecutive sentences, (9) coerced confession, (10) suppression of helpful evidence, (11) state's knowing use of perjured testimony, (12) information on pre-sentence report erroneous, (13) ineffective assistance counsel, (14) double jeopardy, (15) irregularities in arrest, (16) excessive or denial of bail, (17) challenge to imposition or procedures grand jury, (18) refusal to turn over witness notes, (19) constitutional errors in evidentiary rulings, (20) instructions to jury, (21) trial judge prejudicial statements, (22) prosecutor's prejudicial statements, (23) sufficiency of evidence, (24) defendant absent from part of proceedings, (25) improper communication between prosecutor witness/juror, (26) severe sentence, (27) excessive sentence and (28) amount of time on sentence/credit time served.

## II. LEGAL STANDARDS

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and of a Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984).

Objections to Magistrate Judge Trumble's R&R were due within fourteen plus three days of the Petitioner being served with a copy of the same. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The R&R was mailed to the Petitioner by certified mail on October 25, 2019. ECF No. 14. The Petitioner accepted service on October 31, 2020. ECF No. 15. On November 13, 2019, the Petitioner filed a motion for extension of time to file objections to Magistrate Judge Trumble's R&R. ECF Nos. 16. On November 14, 2019, the Court extended the Petitioner's time to file objections to December 23, 2019. ECF No. 17. The Petitioner filed his objections to Magistrate Judge Trumble's R&R on December 27, 2019. ECF No. 20. Having filed objections, the Court will review the Petitioner's objections to the R&R *de novo*. The Court will review the remainder of the R&R for clear error.

### **III. DISCUSSION**

Magistrate Judge Trumble recommends denying and dismissing the petition with prejudice because the Petitioner has not established that he is entitled to relief pursuant to 28 U.S.C. § 2254(d). Specifically, Magistrate Judge Trumble found the Petitioner has failed to demonstrate that the decision of the state court is contrary to, or involves an unreasonable application of, clearly established federal law as determined by the Supreme Court. Moreover, the Petitioner has failed to demonstrate that the state court's adjudication resulted in a decision based on an unreasonable determination of the facts.

In the Petitioner's objections, he sets forth facts to support the grounds he asserted in his petition. The Petitioner believes the facts "were not represented accurately in either his trial, appeal or habeas corpus petitions." ECF No. 22. The Petitioner fails to set forth how the Circuit Court of Berkeley County, West Virginia or the Supreme Court of Appeals of West Virginia decided his claims contrary to clearly established Federal law, or applied

an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States. The Petitioner also fails to set forth how the Circuit Court of Berkeley County, West Virginia or the Supreme Court of Appeals of West Virginia decided his claims based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings. Accordingly, because the Petitioner has not established that he is entitled to relief pursuant to 28 U.S.C. § 2254(d), his objections are **OVERRULED**.


#### IV. CONCLUSION

Accordingly, upon careful review of the R&R and the Petitioner's objections, it is the opinion of this Court that Magistrate Judge Trumble's Report and Recommendation [ECF No. 14] should be, and is hereby, **ORDERED ADOPTED** for the reasons more fully stated therein. The Petitioner's § 2254 Petition [ECF No. 1] is **DENIED** and **DISMISSED WITH PREJUDICE**.

As a final matter, upon an independent review of the record, this Court hereby **DENIES** the Petitioner a Certificate of Appealability, finding that he has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

This matter is **ORDERED STRICKEN** from the Court's active docket. The Clerk of Court is **DIRECTED** to mail a copy of this Order to the Petitioner by certified mail, return receipt requested, at his last known address as reflected on the docket sheet.

**DATED:** April 16, 2020

  
GINA M. GROH  
CHIEF UNITED STATES DISTRICT JUDGE